IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2890 OF 2003.
IN
SUIT NO. 2774 OF 2003

Chaudhary Abdul Majid Shahadat] .. Plaintiff

Versus

1. Bhagwan D. Aswani & Anr.] .. Defendants

Mr.Jayesh Bhatt for the plaintiff.

Mr.Arvind Pawar h/f H. Pawar for the defendants.

CORAM: ANOOP V. MOHTA, J.

DATED: 14TH SEPTEMBER, 2005

P.C. :

1. Heard. The basic suit is a money claim based on the agreement between the parties. Pending the suit, however, Notice of Motion has been taken out on a apprehension that defendants are likely to create third party interest by selling the suit property to defraud all creditors, including the plaintiff. By order dated 16th September, 2003, in the earlier Notice of Motion No.2563 of 2000, this Court has granted liberty to apply under Order 38 of the Civil Procedure Code if case is

made out. The present Notice of Motion, therefore, is filed alongwith the supporting Affidavit dated 29th September, 2003. By order dated 7th October, 2003, after considering the averments made the Court has granted ad-interim relief in terms of prayer clause (c). In the result, there is an interim order of injunction restraining the defendants from alienating, encumbering, dealing with or disposing of the said flat and/or parting with the same and/or inducting any third party or person therein. This order has remained intact till this date.

2. The learned counsel appearing for the defendants, during the course of hearing, filed an Affidavit dated 21st June, 2004. Apart from denial of the various averments, in paragraph 23, the defendant No.1, on behalf of all the defendants, has made a positive averments that: *"except the said flat the Defendants do not have any residential accommodation to reside and the Defendants do not have any intention of whatsoever nature to dispose of and/or to create any third party interest in respect of the said flat as apprehended by the Plaintiff. I therefore submit that in view of the same the Notice of Motion be disposed of accordingly."*

3. The learned counsel appearing for defendants makes a further statement that the aforesaid Affidavit has been filed on behalf of all the defendants. Considering this, I am inclined to confirm the order dated 7th October, 2003, in terms of prayer clause (c). The Notice of Motion is accordingly disposed of.

[ANOOP V. MOHTA, J.]

[srpasha@hc]